

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION AT DAYTON**

ROGER DEAN GILLISPIE,

Petitioner,

-vs-

DEB TIMMERMAN-COOPER, Warden,

Respondent.

:

Case No. 3:09-cv-471

:

Magistrate Judge Michael R. Merz

:

DECISION AND ORDER ON RESPONDENT'S MOTION *IN LIMINE*

This habeas corpus case is before the Court on Respondent's Motion *in Limine* regarding evidence which Respondent projected Petitioner might attempt to offer at the evidentiary hearing set for March 10, 2011 (Doc. No. 39). Petitioner has responded by disclaiming any intention of seeking to introduce most of the material objected to by the Warden (Doc. No. 42).

The Motion in Limine is granted to the extent that Petitioner will not be permitted to introduce evidence listed in the Motion whose exclusion has not been objected to in the Response. The Court agrees with Petitioner that the materiality of the content of the alleged Brady material is an issue which this Court must decide and which is open to development by Petitioner in the hearing, absent a stipulation to materiality as suggested by Petitioner.

All other objections to proffered evidence are reserved for the hearing.

March 9, 2011.

s/ **Michael R. Merz**
United States Magistrate Judge